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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,029	10/01/2003	Douglas L. Goedeken	P6187US	9524
7590 KAGAN BINDER, PLLC Maple Island Building, Suite 200 221 Main Street North Stillwater, MN 55082				
01/26/2010				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
01/26/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/677,029

Applicant(s)

GOEDEKEN ET AL.

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 10, 11, 21-25 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 10, 11, 21-25, 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The 112 first paragraph rejection of claims 28-32 is hereby withdrawn because of applicant's persuasive argument.

Claims 1-2, 10-11, 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Freyn et al.

Freyn et al disclose an unproofed frozen dough comprising an acidic active agent, a basic active agent and yeast in amount of 2-20% . The amount of basic leavening agent is from 2.5-4% based on 100% flour and the amount of acidic leavening agent is enough to neutralize the basic ingredient. Example 1 shows 3.55% basic agent and 3.55% acidic agent. The dough products include dinner rolls, bread sticks, cinnamon rolls. The acidic active agent can be selected from the ingredients listed on column 2 lines 50-60. The frozen dough does not need to be thawed or proofed prior to baking; however, the dough may be thawed and proofed without detracting from the quality of a baked product. The method comprises the step of determining amount of ingredients to form the dough. (see col. 2,3 and col. 5 and the examples)

The amounts of acidic active agent and basic active agent do not define over Freyn et al. because they disclose an amount of 2.5-4% basic active agent based on 100% flour; thus, the amount falls within the range claimed. The acidic agent is required to completely neutralize the basic agent; thus, it is inherently in the same range or a little higher than the basic agent. Thus, the acidic active agent also falls within the claimed range. . Example 6 shows a ratio of 1.70 which falls within the claimed range in claims 28 and 1. The reference discloses all the limitations claimed. The property of being thawed and proof in a retarder at temperature in the range of 32-46 degree is

inherent in the Freyn et al dough because it is the same dough containing the same ingredients as claimed. Furthermore, the limitation of "the dough can proof at retarder condition" is not a positive limitation; it is reciting what the dough can do, which is similar to intended use which does not determine the patentability of the product. The claims are directed at an unproofed frozen dough containing the recited ingredients and Freyn discloses such dough.

Claims 3,6, 21- 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freyn et al.

Freyn et al do not disclose encapsulated basic active, the raw specific volume as claimed and the use of fresh crumbled yeast .

Encapsulated leavening agent is well known in the art as exemplified in the Moder et al reference submitted by applicant. It would have been obvious to one skilled in the art to use encapsulated basic agent when desiring to prevent the action between the leavening acid and leavening base until baking time. It would also have been obvious to use fresh crumbled yeast when desiring a fresh ingredient. As to the specific volume, this parameter can vary depending on the several factors including the amount of leavening agents used, the type of product, the mixing time, the proportions of ingredients used etc.. It would have been obvious to one skilled in the art to determine the appropriate raw specific volume depending on the type of product and the specific texture and taste wanted. Such determination is within the skill of one in the art through routine experimentation. Claims 24-25 are included in the 103 rejection because they depend from claim 6 which is rejected under 103 because Freyn et al do not disclose

the yeast used is fresh crumbled yeast. However, all the limitations in claims 24-25 are taught in Freyn et al. The acid leavening agents in Freyn et al include high solubility and low solubility agents and the amounts are within the range claimed. Freyn et al disclose the amount of basic ingredient falling within the range claimed in claim 21. However, Freyn et al do not disclose fresh crumble yeast.

In the response filed 11/6/09, applicant argues the claims are not anticipated by Freyn et al because the calculation of the ratio of flour to water must include the water in the liquid egg component. This argument is not persuasive. The prior art is applied according to the broadest interpretation of the claims. Claim 1 and previous claim 28 recite the ratio of flour to water; thus, the calculation is based on the flour and water. There is nothing in the claims that require that the ratio is based on all components of the dough that contain water.

Applicant makes the same argument with respect to the 103 rejection. The argument is not persuasive as set forth above.

Applicant's arguments filed 11/6/09 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 21, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1794

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